

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10/23/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2002-000234

FILED: \_\_\_\_\_

MARTIN CRAIG WATSON

NEAL W BASSETT

v.

STATE OF ARIZONA

BARTON J FEARS

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5858499

Charge: 1. DUI  
2. DUI W/A.C. OF .08 OR HIGHER  
3. FAIL TO DRIVE IN ONE LANE  
4. FAIL TO PROVIDE INSURANCE

DOB: 11/16/58

DOC: 11/10/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A) and 13-4032.

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The State appeals from an order by the trial judge granting Appellee's Motion to Suppress, based upon an alleged unlawful stop of Appellee's vehicle. This case was scheduled for an evidentiary hearing on April 18, 2002. At the time set for the evidentiary hearing the attorneys for both parties were late. Apparently, the prosecutor left the courtroom and when he or she returned discovered that the court had already called the case and granted the Motion to Suppress. Appellee correctly points out that the State had also failed to file any type of response to Appellee's Motion to Suppress. The only issue presented for review is whether the trial erred in granting the Motion to Suppress without permitting the State to respond, and without taking any evidence.

The answer to the first issue is a simple one: Appellant, the State of Arizona, has waived its right to file a response to Appellee's Motion to Suppress by its failure to file a timely response to the motion. However, that alone is not dispositive of the remaining issue before this court: whether the trial court erred in failing to hold an evidentiary hearing. This Court concludes, based upon the facts of this case, that the trial judge did err in failing to hold an evidentiary hearing.

Rule 16.2(b), Arizona Rules of Criminal Procedure provides:

**Burden of Proof on Pretrial Motions to Suppress Evidence.** The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial. However, whenever the defense is entitled under Rule 15 to discover the circumstances surrounding the taking of any evidence by confession, identification or search and seizure, or defense counsel was present at the taking, or the evidence was obtained pursuant to a valid search warrant, the prosecutor's burden of proof shall arise only after the

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Defendant has come forward with evidence of specific circumstances which establish a *prima facia* case that the evidence taken should be suppressed (emphasis added).

It is clear that the defense (Appellee) was entitled under Rule 15, Arizona Rules of Criminal Procedure, to discover the circumstances surrounding the search and seizure at issue in this case. As a result of this fact, it is the Defendant (Appellee's) burden to prove "specific circumstances which establish a *prima facia* case"<sup>1</sup>. Appellee argues that he provided specific facts within his motion. This contention is not supported by the record. The Motion to Suppress filed by Appellee can best be described as minimal. The handwritten matters on the form motions supplied by the court read as follows:

Set matter for evidentiary hearing.  
Defendant contesting stop. Denies any  
improper or illegal driving.<sup>2</sup>

And, the motion goes on to describe why the judge should grant the motion:

Bad stop. No bad driving. Defense  
will call passenger Dan Morgan - 3730  
West Coolidge, Phoenix, AZ 85019, plus  
Defendant to support claim.<sup>3</sup>

A Defendant does not satisfy his or her burden of coming forward with evidence of specific circumstances that establish a *prima facia* case that a constitutional violation occurred and the Defendant is entitled to suppression of evidence by conclusory statements such as those contained within the Motion to Suppress filed by the Appellee's attorney in this case.

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<sup>1</sup> Rule 16.2(b), Arizona Rules of Criminal Procedure, quoted *infra*.

<sup>2</sup> Defendant's Motion to Suppress, record on appeal from Phoenix City Court.

<sup>3</sup> *Id.*

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Appellee's Motion to Suppress contains no specific facts or circumstances other than conclusory legal allegations. Therefore, Defendant (Appellee) had the burden of providing such evidence to the trial court in support of his Motion to Suppress. The trial judge erred in failing to require this evidence before granting Appellee's motion.

IT IS THEREFORE ORDERED reversing the trial judge's order granting Appellee, Martin C. Watson's Motion to Suppress.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

October 22, 2002

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT